

STATE OF MICHIGAN
COURT OF APPEALS

SEYBURN, KAHN, GINN, BESS, DEITCH and
SERLIN, P.C.,

Plaintiff-Appellant,

v

KIRIT BAKSHI,

Defendant-Appellee,.

UNPUBLISHED
March 13, 2003

No. 238697
Oakland Circuit Court
LC No. 99-018126-CK

Before: Kelly, P.J., and White and Hoekstra, JJ.

WHITE, J. (*concurring in part and dissenting in part*).

I agree that the circuit court erred in granting defendant's motion for summary disposition. The circuit court erred in applying the November date, the date defendant stopped paying, without considering whether there was a proper action on an open account and, if so, when the last proper billable entry occurred.

I would, however, vacate and remand for further proceedings, rather than decide the issue in plaintiff's favor as a matter of law. I do not agree that the determination made in the malpractice case is dispositive here. While defendant conceded below that if there is a proper claim on open account, the action is barred six years from the date of the last proper billable entry, defendant contested whether there was an open account and the circuit court did not reach that issue.

Further, assuming a proper action on an open account, the parties disputed whether the actions taken in October 1993 were for plaintiff's benefit or defendant's, and thus whether the billings were proper. The circuit court did not resolve this issue, and neither did the circuit court's determination in the prior malpractice action. The malpractice case was filed June, 30 1995. The issue in that case was whether the March or April 1993 dates of the last legal services performed in the cases, and the filing of a motion to withdraw, would control so as to bar the action. The law firm's motion to withdraw was not granted until the last day of September, 1993, within the two-year period, and the firm performed activities relating to closing the file and returning material to the client in October 1993. In this context, the court's opinion rejecting the March and April dates and stating that the firm "did not discontinue serving plaintiffs with respect to those matters until October 1993" is not a finding that the activities underlying the October billings were for defendant's benefit and the billings therefore proper. Additionally, the

court did not make a finding that representation continued until any particular date in October, a crucial determination in the instant case, which was filed October 8, 1999.

I would vacate the grant of defendant's motion for summary disposition and remand for further proceedings to resolve the issues whether there was an open account and the date of the last proper billing. With regard to the latter issue, I would direct the circuit court's attention to State Bar of Michigan Ethics Opinion R-19 (August 4, 2000), which may have some bearing on the issue.

/s/ Helene N. White